

STATE OF VERMONT  
VERMONT SUPERIOR COURT, CHITTENDEN UNIT, CIVIL DIVISION

BURLINGTON POLICE OFFICERS'  
ASSOCIATION )

v. )

BURLINGTON POLICE DEPARTMENT, AND )  
THE CITY OF BURLINGTON )

378-4-19CNCV  
Docket No. VERMONT SUPERIOR  
COURT

APR 23 2019  
Pd. 267461  
CHITTENDEN UNIT

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, the Burlington Police Officers' Association, by way of its counsel, Rich Cassidy Law, complains against the Burlington Police Department as follows:

**PARTIES**

1. The Plaintiff, the Burlington Police Officers' Association (hereinafter, the "BPOA") is a non-profit corporation domiciled in Vermont and with its primary place of business in Chittenden County, Vermont.
2. The City of Burlington is a Vermont municipality and a "public agency" as defined in 1 V.S.A. § 317(a)(2).
3. The Burlington Police Department is the law enforcement division for the City of Burlington, has its primary place of business in Chittenden County, Vermont, and is a "public agency" as defined in 1 V.S.A. § 317(a)(2).

**VENUE**

4. As all the parties are located in Chittenden County, Vermont, venue is properly in this Court.



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## JURISDICTION

5. This matter is an application challenging the denial of access to public records request and is brought subject to 1 V.S.A. § 319(a).
6. 1 V.S.A. § 319(b), requires that this matter, "... take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way[]," "except as to cases the court considers of greater importance[],"

## FACTS

7. On April 3, 2019, the BPOA requested four public records related to an incident on March 12, 2019, between Burlington Police Officer Cory Campbell and Douglas Kilburn.
8. The records requested are a) the Axon video taken from Officer Campbell's body camera worn on March 12, 2019; b) video from the University of Vermont Medical Center's grounds on that date; c) any report completed by Officer Cory Campbell relating to the March 12 incident; and d) the affidavit that was prepared relating to the March 12 incident.
9. On April 8, 2019, the City of Burlington acknowledged having all four records in its possession but denied the request.
10. The City of Burlington cited three exceptions to the Vermont Public Records Act, 1 V.S.A. § 315 et seq.
11. The first exception was on § 317(c)(5)(A)(i) grounds that production would "reasonably have the possibility of interfering with enforcement proceedings due to their ongoing nature."



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12. The second exception was on § 317(c)(5)(D) grounds that production would result in “identify[ing] a ‘private individual who is a witness or victim of a crime,’”
13. The third exception was on § 317(c)(7) grounds that production would result in disclosing “personal documents relating to an individual, including ... medical or psychological facts concerning any individual....”
14. By statute, in the case of a denial of access to a public record, the City is required to “include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial[.]” 1 V.S.A. § 318(b)(2)(B).
15. The City of Burlington did not state any facts supporting its denial.
16. On April 12, 2019, Plaintiff appealed the denial to the administrative authority designated by the City of Burlington for appeal, Chief of Police Brandon del Pozo.
17. On April 19, 2019, Chief del Pozo denied the appeal.
18. Chief del Pozo likewise did not state any facts supporting his denial of the Plaintiff’s appeal.

**COUNT I – VIOLATION OF THE VERMONT PUBLIC  
RECORDS ACT, 1 V.S.A. § 317**

19. The Plaintiff herein re-alleges and incorporates ¶¶ 1 – 17 above.
20. The Defendants have wrongfully asserted 1 V.S.A. § 317 (c)(5)(A)(i), “possibility of interfering with enforcement proceedings,” as a basis for denial, by failing to disclose a factual basis supporting the denial.
21. On information and belief, the Defendants cannot show that disclosure of the records will result in a “reasonab[le] ... possibility of interfering with enforcement proceedings.”



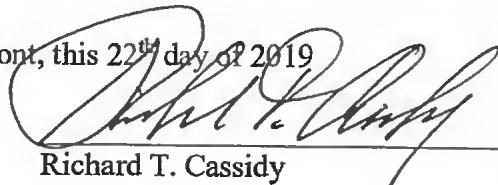
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22. The Defendants have wrongfully asserted 1 V.S.A. § 317(c)(5)(D) “records which identify a private individual who is a witness or a victim of a crime” as a basis for denial, by failing to disclose a factual basis supporting the denial.
23. On information and belief, the Defendants cannot show that disclosure of the records will “identify a private individual who is a witness or victim of a crime.”
24. The Defendants have wrongfully asserted 1 V.S.A. § 317(c)(7) “personal documents relating to an individual, including medical or psychological facts concerning any individual,” as a basis for denial, by failing to disclose a factual basis supporting the denial.
25. On information and belief, the Defendants cannot show that disclosure of the records will result in disclosing “personal documents relating to an individual, including medical or psychological facts concerning any individual.”
26. These wrongful denials constitute a violation of 1 V.S.A. § 316(a), which mandates that any person may inspect or copy any public record of a public agency.

**RELIEF REQUESTED**

WHEREFORE the Plaintiff requests that the Court declare the rights of the parties, issue a mandatory injunction requiring that the Defendants immediately provide the requested records to the plaintiff, and award the Plaintiff its attorneys’ fees and litigation expenses, pursuant to 1 V.S.A. § 320, together with its costs of action.

Dated, at South Burlington, Vermont, this 22<sup>nd</sup> day of 2019



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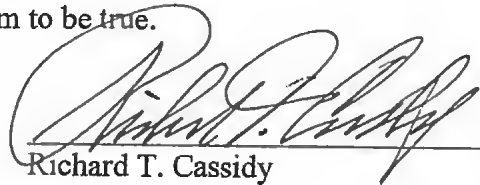
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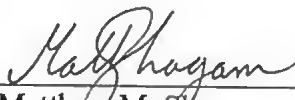
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**VERIFICATION**

NOW COMES Richard T. Cassidy, under oath, and states that the facts alleged in the Complaint are true to the best of his knowledge, and that to the extent that the facts are alleged under information and belief, I believe them to be true.

  
Richard T. Cassidy

At South Burlington, this 22<sup>nd</sup> day of April 2019 personally appeared Richard T. Cassidy, as representative of the Burlington Police Officers' Association and authorized agent of the same, being personally known to me, and gave oath to the foregoing.

  
Matthew M. Shagam  
Notary Public, No. 157.0009064  
My commission expires: 1/31/2021



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